Copyright Board of Canada

2009-2010

Estimates

Part III – Report on Plans and Priorities

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Minister of Industry

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Minister's Message

As Minister of Industry, I am committed to the long-term competitiveness and prosperity of our country. Canada has many economic advantages upon which we must continue to build if we are to set the right conditions for our long-term success. With this in mind, Industry Canada and its Portfolio partners are striving toward the development of an innovative economy with robust sectors and an efficient and competitive marketplace.

Our priorities remain aligned with Advantage Canada, the government's long-term economic plan. Here, we set out clear objectives, including the reduction of taxes, the encouragement of entrepreneurship, and the development of a knowledge-based economy.

In the 2009-2010 Report on Plans and Priorities, we recognize that as we look to the year ahead we are entering a period of continued global economic uncertainty, one that demands clear and strategic action on the part of the government to ensure we accomplish the long-term goals we have set for ourselves. Our departmental priorities and initiatives will be guided by a balanced consideration of the demands of the global economic situation and our long-term vision for Canada's growth and prosperity.

In Budget 2009 — Canada's Economic Action Plan, the government has developed a clear and comprehensive response to the slowdown in the global economy, which is in keeping with the continuing objectives of Advantage Canada. The economic action plan addresses short-term realities, while setting in place the conditions to strengthen Canada's economy for generations to come.

Industry Canada and its Portfolio partners are at the heart of the government's strategy to stimulate the Canadian economy. We are taking steps to improve the competitiveness of Canada's traditional economy by providing short-term support for key sectors such as the auto industry. We are ensuring that all regions of Canada prosper by supporting economic diversification. We are fostering small businesses by improving access to credit and encouraging growth through tax reductions and incentives. We are supporting measures to develop a highly skilled workforce through such means as expanding the Canada Graduate Scholarships program. At this time of intense international competition for the world's best and brightest, government support is helping to attract and retain these individuals in Canada. We are positioning Canada as a leader in the global knowledge economy.

In the ongoing pursuit of our mandate, we will continue to focus on innovation as a means to develop a globally competitive economy. Our ultimate goal is to help Canadians continue to enjoy a quality of life that is envied throughout the world.

It is my pleasure to present this year's Report on Plans and Priorities for Industry Canada and its Portfolio partners, which will outline in greater detail the priorities and pursuits in which we will be engaged in the year to come.

Tony Clement
Minister of Industry

Copyright Board of Canada

SECTION I: DEPARTMENTAL OVERVIEW

Raison d'être

The Copyright Board of Canada's program objective is to set royalties which are fair and equitable to both copyright owners and users of copyright-protected works. This includes setting fair and equitable terms and conditions so as to permit the use of works when the owner of the copyright cannot be located.

The Board is an independent administrative agency that has been conferred department status for purposes of the *Financial Administrative Act*. The mandate of the Board is set out in the *Copyright Act* (the "*Act*"). The Board is empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works when the administration of such works is entrusted to a collective administrative society.

The Copyright Board of Canada is an economic regulator. It deals with complex social, cultural, demographic, economic and technological issues (e.g., communications technology, use of music over the Internet, blank CDs, and software management systems to protect music or administer rights). The Board's decisions are not appealable, but can be the subject of judicial review by the Federal Court of Appeal. The Board has existed in one form or another since the 1930s, but its jurisdiction was significantly expanded in 1989 and 1997.

The program objective of the Board underlies the achievement of strategic outcomes related to innovation through new knowledge, which has become the main source of competitive advantage in all sectors of economic activity and is closely associated with increased exports, productivity growth, and the creation of new firms.

In this context, our country's handling of intellectual property matters is a critical element in our long-term success in innovation, and by extension, to our long-term economic health. The terms and conditions by which intellectual property owners (such as owners of copyrighted works) are compensated will largely define the incentive structure for innovation in and creation of copyrighted materials. In addition, the design and implementation of regulations can have a significant impact on innovation and competitiveness, particularly in the areas of intellectual property rights.

Mandate, Roles and Responsibilities

Mandate of the Board
The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located.

The Copyright Board of Canada was established on February 1, 1989, as the successor of the Copyright Appeal Board. Its responsibilities under the *Act* are to:

- certify tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings [sections 67 to 69];
- certify tariffs, at the option of a collective society referred to in section 70.1, for the doing of any protected act mentioned in sections 3, 15, 18 and 21 of the *Act* [sections 70.1 to 70.191];
- set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions [sections 70.2 to 70.4];
- certify tariffs for the retransmission of distant television and radio signals or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes [sections 71 to 76];
- set levies for the private copying of recorded musical works [sections 79 to 88];
- rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located [section 77];
- examine, at the request of the Commissioner of Competition appointed under the *Competition Act*, agreements made between a collective society and a user which have been filed with the Board, where the Commissioner considers that the agreement is contrary to the public interest [sections 70.5 and 70.6];
- set compensation, under certain circumstances, for formerly unprotected acts in countries that later join the Berne Convention, the Universal Convention or the Agreement establishing the World Trade Organization [section 78].

In addition, the Minister of Industry can direct the Board to conduct studies with respect to the exercise of its powers [section 66.8].

Finally, any party to a licence agreement with a collective society can file the agreement with the Board within 15 days of its conclusion, thereby avoiding certain provisions of the *Competition Act* [section 70.5].

Strategic Outcome and Program Activity Architecture (PAA)

Program Activity Architecture	
STRATEGIC OUTCOME	**PROGRAM ACTIVITY**
Fair decision-making to provide proper incentives for the creation and use of copyrighted works	→ Copyright Tariff Setting and Issuance of Licences

Planning Summary

Financial Resources ($ thousands)

2009-10	2010-11	2011-2012
3,054	3,054	3,054

Note: The amount of $3,054 includes the current reference level of $2,624 plus $430 which will be transferred permanently from Industry Canada ($215) and Canadian Heritage ($215) through the 2009-10 Estimates process.

Human Resources (Full-time Equivalents (FTE))

2009-10	2010-11	2011-12
21	21	21

Note: The number of full-time equivalents includes 5 Governor-in-Council appointees and 16 employees.

Strategic Outcome : Fair decision-making to provide proper incentives for the creation and use of copyrighted works

Program Activity	Expected Results	Forecast Spending 2008-09	Planned Spending ($ thousands)			Alignment to Government of Canada Outcomes
			2009-10	2010-11	2011-12	
Copyright Tariff Setting and Issuance of Licences	Fair and equitable tariffs and conditions	2,744	3,054	3,054	3,054	An innovative and knowledge-based economy

Innovation through new knowledge has become the main source of competitive advantage in all sectors of economic activity and is closely associated with increased exports, productivity

growth, and the creation of new firms. In this context, our country's handling of intellectual property matters is a critical element in our long-term success in innovation, and by extension, to our long-term economic health. The terms and conditions by which intellectual property owners (such as owners of copyrighted works) are compensated will largely define the incentive structure for innovation in and creation of copyrighted materials. In addition, the design and implementation of regulations can have a significant impact on innovation and competitiveness, particularly in the areas of intellectual property rights.

The Copyright Board of Canada recognizes the need to ensure an effective and efficient copyright regulatory regime in order to attain the maximum productivity in those sectors that create and use copyrighted works. Further, the strategic outcomes of a fair and competitive marketplace and reasonable opportunities for Canadian firms to export copyright protected goods and services in the music, content creation and programming areas, as well as the downstream broadcasting, publishing and entertainment industries will be impacted by the performance of the Copyright Board of Canada.

Contribution of Priorities to Strategic Outcome

Departmental Priorities

Priority Name	Type	Links to Strategic Outcome	Description
1. Ensure timely and fair processes and decisions	Ongoing	Fair decision-making to provide proper incentives for the creation and use of copyrighted works	Leads to a more efficient process and to decisions that take into account the ever-changing technological environment, global events and new business models
2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting	Ongoing		Ensures a proper assessment by the Board of risks associated with economic and technological changes in relevant industries
3. Improve management practices	Ongoing		Favours the implementation of relevant and efficient management practices at the Board

There are three priorities associated with the Copyright Board of Canada's strategic outcome of achieving fair decision-making to provide proper incentives for the creation and uses of copyrighted works. These are:

1. Ensure timely and fair processes and decisions

To achieve this priority, the Board will need to ensure that participation costs in the hearing process are being kept as low as possible, thus encouraging participation of the appropriate parties and streamlining the process. The Board will also need to provide appropriate guidance,

information and analysis to the participants in order to facilitate the examination process and to foster greater participants' satisfaction. This will be done in particular through telephone advisories and case management meetings with representatives. Finally, by engaging in pre-hearing consultations and information gathering, and by conducting well organized proceedings which address key issues facing copyright-related industries, the Board will be able to issue timely, fair and consistent decisions.

The monitoring of this priority will be achieved by conducting informal surveys of hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process. The achievement of this result is also directly monitored through the timely conduct of hearing processes and lack of interruption in proceedings due to administrative and technical delays. In addition, the implementation of a pre-hearing joint statement of (non-contested) facts and handling of legal issues solely through written submissions will improve the efficiency of the process. Finally, the Board plans to continue to examine, for each process, how to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.

In addition, in 2009-2010 the Board will continue to examine alternatives to current procedures based upon input from hearing participants as part of a plan to develop and implement a more active involvement in pre-hearing information gathering aimed at reducing time and cost to participants while safeguarding the fairness of procedures.

The rationale underlying this priority is to minimize administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter, thus increasing regulatory efficiency. To the extent that this also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process will be improved.

2. Advance the analytical framework for decisions and the regulatory processes for tariff-setting

Among the most significant risks which the Board faces in achieving its strategic outcomes are the potentially disruptive impact of new technologies, in particular on how copyright material is utilized, distributed and monitored. Fair and equitable decisions critically depend on the Board's ability to identify, understand and assess the industry issues before they undermine or adversely impact existing copyright regimes. The Board's approach to managing the technology risk is to systematically monitor relevant journals, other publications and web-sites, and to attend industry seminars and conferences.

Knowledge of the international experience is also a key tool in addressing the challenges of changing technology and the impact of global events. By comparing experiences across different countries, the Board expects to gain early warning of significant developments and their likely impacts on the Canadian situation.

Leadership in copyright matters will continue to build on the groundwork performed in the last two years. The Board plans to continue its leadership role in the establishment and expansion of international activities such as sharing of procedures, data, analysis and other information. In this

regard, the Board will participate in meetings of an international forum of copyright tribunal administrators to be convened by WIPO.

The Board expects to play a key organizational role in arranging fora to bring the international copyright tariff administration community together. The next major forum is targeted for 2009 in Singapore. The Board views its leadership within the international community as a primary horizontal initiative over the next three years. With a view to further this leadership, the Board also acted as a host organization for the 2005 annual congress of the international Society for Economic Research on Copyright Issues, and continued to be actively involved in the following annual congresses, including a contribution to the organization of a special session on copyright collective organizations at the 2007 annual congress in Berlin. The Board will continue to be involved with this organization in 2009-2010.

By its involvement in international activities as they relate to copyright tariff setting in other parts of the world, the Board ensures that its own tariff-setting processes and decisions are cognizant of developments outside of Canada.

3. Improve Management Practices

Over the period 2008-2009, the Board worked on reaching an agreement with Industry Canada and Canadian Heritage, as well as Treasury Board, aimed at securing additional funding needed to ensure that the Copyright Board is able to adequately fulfill its mandate. Contingent on obtaining approval for this agreement leading to additional funding for the year 2009-2010 and beyond, effort will be put to hire the required additional employees at different positions in the organization. The Board will also explore possibilities to expand its facilities to house the additional employees.

The Copyright Board will continue to work in partnership with four other small quasi-judicial agencies: the Canadian Artists and Producers Professional Relations Tribunal, the Registry of the Competition Tribunal, the Transportation Appeal Tribunal and the Public Service Staffing Tribunal (the "cluster group") on implementing government-wide initiatives and continuing valuable work on those initiatives already implemented.

The Board will continue to work on its training and development policy and continue to develop individual training plans for each employee. It will ensure that employees maintain and upgrade their skills so that they may meet the challenges of the future.

The Board will review its Human Resources Plan to assess the changing needs of the Board and will take into account succession planning. It is essential that the Board continue to ensure that it has the capacity it needs to better react to the changing nature of work driven by technology which will result in better service to Canadians.

Furthermore, it will continue to work on an evaluation strategy and performance measurement tools.

Risk Analysis

Operating Environment

The mandate of the Copyright Board of Canada is set out in the *Act* as amended in 1997. The Board has powers of a substantive and procedural nature. Some powers are granted to the Board expressly in the *Act*, and some are implicitly recognized by the courts.

The *Act* requires that the Board certify tariffs in the following fields: the public performance or communication of musical works and of sound recordings of musical works, the retransmission of distant television and radio signals, the reproduction of television and radio programs by educational institutions and private copying. In other fields where rights are administered collectively, the Board can be asked by a collective society to set a tariff; if not, the Board can act as an arbitrator if the collective society and a user cannot agree on the terms and conditions of a licence.

The examination process is always the same. The collective society must file a statement of proposed royalties which the Board publishes in the *Canada Gazette*. Tariffs always come into effect on January 1. On or before the preceding 31st of March, the collective society must file a proposed statement of royalties. The users targeted by the proposal (or in the case of private copying, any interested person) or their representatives may object to the statement within sixty days of its publication. The collective society in question and the opponents will then have the opportunity to argue their case in a hearing before the Board. After deliberations, the Board certifies the tariff, publishes it in the *Canada Gazette*, and explains the reasons for its decision in writing.

As a rule, the Board holds hearings. No hearing will be held if proceeding in writing accommodates a small user that would otherwise incur large costs. The hearing may be dispensed with on certain preliminary or interim issues. No hearings have been held yet for a request to use a work whose owner cannot be located. The process has been kept simple. Information is obtained either in writing or through telephone calls.

Risk Evaluation

The Board is responsible for tariffs that are estimated to be worth over $300 million annually. In fact, copyright tariffs underpin several industries which, according to a Conference Board of Canada study (Valuing Culture, Measuring and Understanding Canada's Creative Economy, Conference Board of Canada, August 2008), generated in 2007 an amount representing 7.4% of Canada's GDP when taking into account the direct, indirect and induced contribution. They also contributed 1.1 million jobs to the economy. The stakes are considerable both for copyright holders and for users of copyright. Consequently, interventions before the Board are thorough, sophisticated and often involving expert witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence.

The Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of

Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly and time-consuming court challenges.

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the specific circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

The Board also enjoys a fair amount of discretion, especially in areas of fact or policy. In making decisions, the Board itself has used various principles or concepts. Strictly speaking, these principles are not binding on the Board. They can be challenged by anyone at anytime. Indeed, the Board would illegally fetter its discretion if it considered itself bound by its previous decisions. However, these principles do offer guidance to both the Board and those who appear before it. In fact, they are essential to ensuring a desirable amount of consistency in decision-making.

Among those factors, the following seem to be the most prevalent: the coherence between the various elements of the public performance of music tariffs, the practicality aspects, the ease of administration to avoid tariff structures that make it difficult to administer the tariff in a given market, the search for non-discriminatory practices, the relative use of protected works, the taking into account of Canadian circumstances, the stability in the setting of tariffs that minimizes disruption to users, as well as the comparisons with "proxy" markets and comparisons with similar prices in foreign markets.

Copyright Board of Canada

Voted and Statutory Items

		($ thousands)	
Vote or Statutory Item	**Truncated Vote or Statutory Wording**	**2009-10 Main Estimates**	**2008-09 Main Estimates**
45	Program expenditures	**2,340**	2,317
(S)	Contributions to employee benefit plans	**285**	289
	Total Department	**2,624**	2,606

Note: The difference between the 2008-2009 and 2009-2010 Main Estimates is due to salary increases and adjustments to the Employee benefit plans.

Details may not add to totals due to rounding.

SECTION II: ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME

Strategic Outcome

The Board's strategic outcome is to ensure **fair decision-making to provide proper incentives for the creation and uses of copyrighted works**.

Program Activity by Strategic Outcome

The following activity contributes to this strategic outcome:

Copyright Tariff Setting and Issuance of Licences

Financial Resources ($ thousands)

2009-10	2010-11	2011-12
3,054	3,054	3,054

Note: The amount of $3,054 includes the current reference level of $2,624 plus $430 which will be transferred permanently from Industry Canada ($215) and Canadian Heritage ($215) through the 2009-10 Estimates process.

Human Resources (Full-time Equivalents (FTE))

2009-10	2010-11	2011-12
21	21	21

Note: The number of full-time equivalents includes 5 Governor-in-Council appointees and 16 employees.

The statutory mandate of the Board is to establish tariffs to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. It is by rendering decisions and issuing licences that the Board fulfill its mandate.

Both the copyright holders and users are stakeholders in this outcome. Consequently, interventions before the Board are thorough and sophisticated, involving experts witnesses, litigation specialists and detailed econometric, business and financial studies, surveys and evidence. In rendering decisions, the Board must consider the underlying technologies (such as the Internet, digital radio, satellite communications), the economic issues and the interests of owners and users in order to contribute, with fair and equitable decisions, to the continued growth of this component of Canada's knowledge industries. Sound tariff decisions avoid serious disruption in affected sectors of the national economy and costly time-consuming court challenges. The Board will be able to evaluate its achievement in this regard by performing evaluations and studies of the economic impact of the Board's decisions on particular sectors of the Canadian economy.

The Board is continuously looking for ways to improve the efficiency of the hearing process by minimizing the overall participants' expenses while ensuring that the process and the tariffs remain fair and equitable. The key partners in this endeavour are the private interest parties who

appear before the Board, and include the various collective societies that represent rights owners and associations and organizations representing users of works.

Improving the efficiency of the regulatory process involves continual refinements in scheduling of witnesses, establishing and communicating the parameters of the hearing to participants, consulting with key stakeholders and developing codes of hearing practice and related guidelines for the conduct of hearings. By improving the efficiency of the tariff hearing process, this activity is expected to contribute to the important objective of reducing the regulatory burden. It is by performing evaluations of the time duration of the process and of participants' satisfaction that the Board will be able to assess the performance achieved through the activity.

Pursuant to section 77 of the Act, the Board may grant licences that authorize the use of published works, fixed performances, published sound recordings and fixed communication signals if the copyright owner cannot be located. Since 1989, the Board has issued 214 such licences. The Board's objective with respect to this activity is to issue licences in a timely manner. The duration of the process will help the Board assess its performance with respect to this activity.

Internal Services

This activity deals with financial and materiel management policies, systems, processes and standards which are consistent with modern comptrollership. In implementing these policies, compliance with Parliament's requirements for financial stewardship and probity must be ensured. This activity also encompasses the responsibility of providing human resource services.

By focusing on the priorities described earlier in this report with respect to management practices, this activity contributes to the creation of an environment that will allow the Board to fulfill its mandate and realize its objective.

SECTION III: SUPPLEMENTARY INFORMATION

Departmental Planned Spending and Full-Time Equivalents

($ thousands)	Forecast Spending 2008-09	**Planned Spending 2009-10**	Planned Spending 2010-11	Planned Spending 2011-12
Copyright Tariff Setting and Issuance of Licences	2,606	**2,624**	2,624	2,624
Budgetary Main Estimates (gross)	2,606	**2,624**	2,624	2,624
Less: Respendable revenue				
Total Main Estimates	2,606	**2,624**	2,624	2,624
Adjustments:				
Supplementary Estimates:				
Carry Forward	115			
Transfers from Industry Canada and Canadian Heritage		**430**	430	430
Collective Bargaining	23			
Total Adjustments	138	**430**	430	430
Total Planned Spending	2,744	**3,054**	3,054	3,054
Total Planned Spending	2,744	**3,054**	3,054	3,054
Less: Non-Respendable revenue				
Plus: Cost of services received without charge	352	**367**	367	367
Net Cost of Program	3,096	**3,421**	3,421	3,421

Full-time Equivalents	18	**21**	21	21

Other Items of Interest

Organizational Information

Board Members

Board members are appointed by the Governor in Council to hold office during good behaviour for a term not exceeding five years. They may be reappointed once.

The *Act* requires that the Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and apportions its caseload among the members.

The *Act* also designates the Vice-Chairman as Chief Executive Officer of the Board. He or she exercises direction over the Board and supervises its staff.

The organizational structure of the Board follows the requirements set out in section 66 and following sections of the *Act*.

Board's Staff

The Board has a staff of thirteen employees, organized around five operational groups:

1. The Registrar, which plans and manages all activities and resources related to public hearings, and the issuing of licences for the use of works whose copyright owners cannot be located, which includes receiving, organizing and reviewing the documentary evidence and information, and organizing and maintaining the Board's records, archives and library.

2. The Research and Analysis group, which is responsible for the preparation and analysis of reports and research papers, the development of scenario analysis and recommendations and the provision of economic support to Board members and for decisions.

3. The Legal Analysis group, which provides legal analysis and advice on tariff and licence applications before the Board, and represents the Board before the Courts in matters involving its jurisdiction.

4. The Corporate Services group, which is responsible for financial and materiel management policies, systems, processes and standards which are consistent with modern comptrollership.

5. The Technical Support group, which provides support in particular in respect of informatics.